

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

1445 Ross Avenue
Dallas, Texas 75202

1994 DEC 21 PM 3:44

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

Astro Plating
915 Roosevelt
San Antonio, Texas 78210

RESPONDENT

) Docket No. SARA 6-94-049
)
) CONSENT AGREEMENT
) CONSENT ORDER
)
)
)

I. INTRODUCTION AND JURISDICTION

1. This proceeding for the assessment of a civil penalty was instituted pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRTKA), as amended, 42 U.S.C. 11045. The proceeding was instituted by the issuance on September 28, 1994, of an Administrative Complaint ("Complaint"), Docket No. SARA 6-94-049, served upon Astro Plating (Respondent) by the Director, Environmental Services Division, of the United States Environmental Protection Agency Region 6 ("Complainant" or "EPA").

2. The Complaint states a claim upon which relief could be granted, and alleges that Respondent violated the notification requirements of EPCRTKA 312(a), 42 U.S.C. § 11022(a), which involves failure to report inventories of hazardous chemicals to the Local Emergency Planning Committee (LEPC), State Emergency Response Commission (SERC), and local fire department.

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in the Complaint, and Respondent admits to EPA's authority to enforce this Consent



Agreement/Consent Order (Order); however, Respondent neither admits nor denies the Findings of Fact or Conclusions of Law or any specific allegation contained in the Complaint or this Order.

4. For purposes of this proceeding only, Respondent hereby expressly waives its rights to a hearing on any issue of Law or Fact set forth in the Complaint or any Findings of Fact or Conclusions of Law set forth in this Order. Further, for the purpose of this proceeding and for entering into this Order, Respondent waives all defenses which have been or could have been raised to claims set forth in the Complaint.

5. This Order shall apply to and be binding upon EPA, Respondent, and Respondent's agents, successors, assigns, officers, directors, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them. The signatories to this Order certify that they are authorized to execute and legally bind the parties they represent to it. No change in the ownership or corporate status of the Respondent shall alter its responsibilities under this Order.

6. Respondent consents to the issuance of this Order, consents to the assessment of the civil penalty amount noted herein, and for the purpose of settlement of the Complaint, Respondent agrees to the payment of the penalty amount totaling \$500.00 (FIVE HUNDRED DOLLARS).

7. The parties agree that execution of this Order is in the public interest and that payment of the penalties in SECTION IV, PENALTY ORDER, and completion of the provisions of SECTION VI,

POLLUTION PREVENTION PROJECTS in the manner directed by this Order shall result in the complete settlement and satisfaction of the provisions of the Complaint.

II. PRELIMINARY STATEMENT

1. Respondent is doing business in San Antonio, Bexar County, Texas (the "Facility").

2. Respondent is a firm, and therefore a "person" as defined under EPCRTKA § 329(7), 42 U.S.C. § 11049(7).

3. At all times relevant to this Complaint, Respondent owned and/or operated the Facility.

4. Respondent is the owner and/or operator of a "facility" as that term is defined at EPCRTKA § 329(4), 42 U.S.C. § 11049(4), and 40 CFR § 372.3.

5. EPCRTKA § 312(a), 42 U.S.C. § 11022(a), and the regulations found at 40 CFR § 370.20, provide that the owner or operator of a facility required to prepare or have available a Material Safety Data Sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act ("OSHA") of 1970, 29 U.S.C. § 651, shall submit to the Local Emergency Planning Committee ("LEPC"), the State Emergency Response Commission ("SERC"), and the local fire department with jurisdiction over the facility, by March 1, 1988 (and annually thereafter), a completed emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 CFR § 370.20) containing the information required by 40 CFR § 370.20.

6. Sulfuric acid (Chemical Abstract Service #7664-93-9) is a hazardous chemical subject to the MSDS requirements of OSHA.

7. Sulfuric acid is a hazardous chemical as defined at EPCRTKA § 329(5), 42 U.S.C. § 11049(5).

8. The threshold quantity, as that term is defined at EPCRTKA § 312(b), 42 U.S.C. § 11022(b), for sulfuric acid is 10,000 pounds, as set forth in 40 CFR § 370.20.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. During calendar year 1993, Respondent had sulfuric acid present at the Facility.

2. Pursuant to OSHA, and regulations promulgated thereunder, Respondent was required to prepare, or to have available, an MSDS for sulfuric acid present at the Facility during the calendar year 1993.

3. The quantities of sulfuric acid present at the Facility during the calendar year 1993 were, on occasion, in amounts equal to or greater than the threshold quantity established for sulfuric acid in 40 CFR § 370.20.

4. Respondent failed to submit by March 1, 1994 a completed emergency and hazardous chemical inventory form with respect the sulfuric acid located at the Facility to:

- (a) the San Antonio Department;
- (b) the SERC, Texas Department of Health; and
- (c) the Bexar County LEPC.

5. Therefore, Respondent violated of the reporting requirements of EPCRTKA § 312(a), 42 U.S.C. § 11022(a), and is

subject to the assessment of penalties under EPCRTKA § 325(c), 42 U.S.C. § 11045(c).

IV. PENALTY ORDER

1. Pursuant to EPCTRKA § 325, Respondent is hereby ordered to pay a civil penalty in the amount of \$500.00 (FIVE HUNDRED DOLLARS), to be paid within 45 days after the date on which this Order is filed with the Regional Hearing Clerk, Region 6 (the "Effective Date") and to perform the requirements as set forth in SECTION VI. POLLUTION PREVENTION AND TRAINING PROJECTS.

2. Respondent may accelerate this payment if desired. The payment shall be made by mailing a cashier's check or certified check payable to "United States Treasurer" to the following address:

U.S. EPA Region 6
Regional Hearing Clerk
P.O. Box 360582M
Pittsburgh, PA 15251

Docket No. SARA 6-94-049 should be clearly typed on the check to ensure credit.

3. Respondent shall send simultaneous notices of such payment, including copies of the cashier's check or certified check, to the following address:

Steve Mason, Enforcement Coordinator
Contingency Planning Section (6E-EP)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

4. If EPA does not receive payment of the penalty within the prescribed time schedules after the date on which this order is filed with the Regional Hearing Clerk, interest will accrue on

the amount payable from the date of notification of the amount due (the date claim was first mailed to the debtor).

5. If the payment is overdue, EPA will also impose a late-payment handling charge of \$15, with an additional delinquent notice charge of \$15 for each subsequent 30-day period. Finally, EPA will apply a 6 percent per annum penalty on any principal amount not paid within 90 days of the due date. If dispute resolution is invoked, for the purpose of interest calculation, interest will accrue on the final resolution amount from the date of the billing or notification.

V. STIPULATED PENALTIES

1. In addition to any other remedies or sanctions available to the United States, if Respondent fails to pay or fails to show proof of payment of the sums specified in the Penalty Order, or fails to comply with the requirements of the Section on Pollution Prevention and Training Projects, in the manner and upon the terms specified, it shall pay stipulated penalties as follows:

Period of Failure to Comply	Penalty per day per Violation
1st to 15th day	\$ 500.00
Over 15 days	\$ 1,000.00

2. The payment of stipulated penalties shall be made by mailing a cashier's check or certified check payable to Treasurer of the United States, within (30) days of receipt of a demand letter for payment (the "due date") to the following address:

Regional Hearing Clerk (6C)
U.S. EPA, Region 6
P.O. Box 360582M
Pittsburgh, PA 15251

Docket No. SARA 6-94-049 should be clearly typed on the check to ensure proper credit.

3. Respondent shall send simultaneous notices of such payment, including copies of the cashier's check or certified check, to the following:

Steve Mason, Enforcement Coordinator
Contingency Planning Section (6E-EP)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

Respondent's adherence to these procedures will ensure proper credit when payments are received.

4. If EPA does not receive payment within 30 days of the due date, interest will accrue on the amount due from the due date at the current annual rate prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletin per annum through the date of payment. The due date is the date or dates specified in this Order for payment.

5. If the payment is overdue, EPA will also impose a late-payment handling charge of \$15, with an additional delinquent notice charge of \$15 for each subsequent 30-day period. Finally, EPA will apply a 6 percent per annum penalty on any principal amount not paid within 90 days of the due date.

6. The stipulated penalties shall continue to accrue until the violation is corrected.

7. Other penalties for failure to make a timely payment may also apply.

8. In addition to the stipulated penalties set forth above, EPA and the United States specifically reserve the right to seek other remedies or sanctions available to EPA or the United States by reason of Respondent's failure to comply with the requirements of this Order.

VI. POLLUTION PREVENTION AND TRAINING PROJECTS

1. Respondent shall provide emergency response and/or computer equipment for response to hazardous materials incidents within Bexar County, to be determined by the Chairperson of the LEPC. The purchase of the equipment, the value to be \$300.00 (THREE HUNDRED DOLLARS) will be based on specifications provided by the LEPC Chairperson. Respondent shall contact the Chairperson within 45 days from the date of execution of this Consent Agreement and Consent Order to receive specifications for this purchase. The purchase of the equipment and delivery to the Chairperson is to be made no later than 30 days from delivery of specifications to Respondent.

2. Respondent shall provide documentation of completion of each of the projects listed above within thirty (30) days of completion.

VII. COMPLIANCE WITH OTHER LAWS

1. This Order shall not be interpreted to relieve Respondent of its obligations to comply with the requirements of other applicable Federal, State or local laws or regulations.

The pending or outcome of any proceeding concerning the issuance, reissuance, or modification of any authorization or permit shall neither affect nor postpone Respondent's duties and liabilities as set forth in this Order. Nothing in this Order shall be construed to prevent or limit the EPA's civil authority or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

VIII. NOTICE

Any notice to be made to the EPA under the terms of this Order shall be made in writing, and deposited in the United States Mail addressed to:

Steve Mason, Enforcement Coordinator
Contingency Planning Section (6E-EP)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

IX. MODIFICATIONS

Except as provided for herein, there shall be no modification of this Order without written approval of all of the parties to this Order and the Regional Administrator of EPA.

X. EFFECTIVE DATE

This Order shall become effective on the date that it is signed by the EPA Regional Administrator.

XI. TERMINATION

This Order shall terminate when Respondent has completed the requirements of SECTIONS IV, V, and VI.

WHEREFORE, WE HEREBY CONSENT to the entry of this Order.

United States Environmental
Protection Agency, Region 6
COMPLAINANT

12/16/94
Date

James S. Stehling
for Director
Environmental Services Division
EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

Dec. 5, 1994
Date

David J. Davis
FOR RESPONDENT
Astro Plating

CONSENT ORDER

This Consent Agreement and Consent Order is hereby adopted and issued pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act, as amended, 42 U.S.C. §11045, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR Part 22.

Allyn M. Davis
for Jane Saginaw
Regional Administrator
U.S. Environmental Protection
Agency, Region 6

